

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MICHAEL PETTWAY,

Defendant.

ORDER
16-CR-76(LJV)

Along with co-defendant Collins Pettway, defendant Michael Pettway is charged in a Superseding Indictment with conspiracy to possess with intent to distribute, and to distribute, 500 grams or more of a mixture and substance containing cocaine and 28 grams of more of a mixture or substance containing cocaine base; several counts of possession and distribution of cocaine and cocaine base; maintaining a drug-involved premises; and possession of firearms in furtherance of drug trafficking crimes. See Docket Item 12. On March 5, 2017, Michael Pettway moved to suppress evidence. Docket Item 29. After both sides briefed the issue, Magistrate Judge H. Kenneth Schroeder, Jr., held an evidentiary hearing.¹ The evidentiary hearing was limited in scope to the issue of whether the defendant had been given his *Miranda* warnings. At the hearing, Judge Schroeder heard testimony from Buffalo Police Department Detectives Leo McGrath and Timothy Mulhern. The defendant did not offer any evidence at the hearing.

¹ In June 2016, I referred this case to Judge Schroeder for all pretrial matters, including those that a magistrate judge may hear and determine, pursuant to 28 U.S.C. § 636(b)(1)(A), and those that a magistrate judge may hear and thereafter file a report and recommendation, pursuant to § 636(b)(1)(B). See Text Order of Referral dated June 28, 2016.

On June 12, 2017, following the June 1, 2017 evidentiary hearing, Judge Schroeder issued a Report and Recommendation, recommending the denial of the defendant's motion to suppress statements. Docket Item 45. Judge Schroeder found both Detective McGrath and Detective Mulhern to be credible witnesses, and he accepted their testimony in its entirety. Specifically, Judge Schroeder found that the defendant had been given *Miranda* warnings and was advised of his rights immediately after he had been placed under arrest by Detective McGrath and before he was interviewed by Detective Mulhern.

The defendant did not object to Judge Schroeder's Report and Recommendation, and the time to object now has expired. For that reason, the defendant has waived his right to have the Report and Recommendation reviewed. See Fed. R. Crim. P. 59(b)(2) ("Failure to object in accordance with this rule waives a party's right to review."); *see also* Docket Item 45 at 6.

Nevertheless, in its discretion, this Court has carefully reviewed Judge Schroeder's Report and Recommendation (Docket Item 45). Based on that review and the absence of any objection, and for the reasons stated in the Report and Recommendation, this Court adopts the Report and Recommendation in its entirety. Michael Pettway's motion to suppress is DENIED.

IT IS SO ORDERED.

Dated: July 12, 2017
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE